

FILED
US DISTRICT COURT
DISTRICT OF ALASKA

2005 DEC 15 AM 11:23

Michael W. Sewright
BURR, PEASE & KURTZ
810 N Street
Anchorage, AK 99501-3293
Telephone: (907) 276-6100
Fax No.: (907) 258-2530
Attorneys for North Star

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA for the use of
NORTH STAR TERMINAL & STEVEDORE
COMPANY, d/b/a Northern Stevedoring &
Handling, and NORTH STAR TERMINAL &
STEVEDORE COMPANY, d/b/a Northern
Stevedoring & Handling, on its own behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of
SHORESIDE PETROLEUM, INC., d/b/a
Marathon Fuel Services, and SHORESIDE
PETROLEUM, INC., d/b/a Marathon Fuel
Services, on its own behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS, INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY;
and ROBERT A. LAPORE,

Defendants.

Case No. A98-009 CIV (HRH)

**MOTION TO COMPEL
DISCOVERY**

MOTION TO COMPEL DISCOVERY

North Star v. Nugget, et al.; Case No. A98-009 CIV (HRH)

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BURR, PEASE
& KURTZ
PROFESSIONAL CORPORATION
810 N STREET
ANCHORAGE, AK 99501
(907) 276-6100

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I. RELIEF SOUGHT

The Plaintiff and Use-Plaintiff North Star Terminal and Stevedore Company ("North Star") hereby moves for a court order compelling discovery from defendant Nugget Construction, Inc. ("Nugget"). Specifically, North Star requests that the Court order Nugget to provide North Star and the other plaintiff/use-plaintiff claimants in this matter with complete disclosures and answers and the production of documents in accordance with: (1) Federal Rule of Civil Procedure 26(a)(1)(D) (requiring production of insurance agreements as part of initial disclosures); (2) North Star's First Set of Discovery Interrogatory Nos. 2, 3 and 5 and Request for Production Nos. 3, 4, 5, 6, 7 and 8 propounded to the defendants on October 6, 2005; and (3) North Star's Notice of Taking Rule 30(b)(6) Deposition of Nugget dated October 20, 2005 and conducted November 16, 2005.

The information and documents required by that discovery provision and those requests which Nugget refused to provide and which are the subject matter of this motion relate to (1) Nugget's financial condition and (2) Nugget's insurance agreements and policies and claims against insurance, including insurance defense and indemnity agreements. In addition, North Star moves that the Court order resumption of that Rule 30(b)(6) deposition of Nugget in order to inquire into the aforesated information, which Nugget refused to provide at that deposition held November 16, 2005.

This motion is supported by Federal Rule of Civil Procedure 37 and other pertinent law and analysis contained in this memorandum. A copy of the pertinent

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portions of Nugget's aforementioned Rule 26(a)(1) Disclosures is attached hereto as Exhibit 1. The pertinent portions of North Star's aforementioned written Discovery Requests and Nugget's Answers thereto are attached as Exhibit 2. North Star's aforementioned Rule 30(b)(6) Deposition Notice is attached as Exhibit 3. Pertinent excerpts of the transcribed testimony of Nugget's designee John Smithson at the deposition in which he and Nugget's counsel again refused to provide that information and related documents are attached as Exhibit 4.

In accordance with Federal Rule of Civil Procedure 37(a)(2)(A) and (B), undersigned counsel certifies that North Star has in good faith conferred and attempted to confer with Nugget and its attorneys in an effort to secure the information and material requested without court action. This certification is further supported by the latest written communications on that subject attached hereto as Exhibit 5. Regrettably, court action is necessary.

II. APPLICABLE RULES

Federal Rule of Civil Procedure 26(a)(1)(D) is pertinent to this motion. Federal Rules of Civil Procedure 37(a)(2), (3), (4)(a), and 37(b), which provide for a motion in the event of failure to make disclosure or cooperate in discovery and expenses and sanctions in relation to that motion, are also pertinent. In addition, Federal Civil Rules 30(b)(5) and 30(b)(6), 33 and 34 apply.

III. THE REQUESTED INFORMATION ABOUT NUGGET'S FINANCIAL CONDITION IS DISCOVERABLE.

North Star's Amended Complaint on file includes a claim for punitive damages

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against Nugget based on state law. *See* North Star's Amended Complaint dated August 31, 2005 ¶39 at p. 24. The financial information regarding Nugget sought by North Star's Interrogatory Nos. 2 and 3 and Request for Production Nos. 3-7 propounded to Nugget and also at the Rule 30(b)(6) deposition of Nugget is certainly relevant to that claim. *See* Exh. 2 at pp. 6-15; Exh. 3 at p. 3 ¶2; Exh. 4 at pp. 14-21. *See also CEH, Inc. v. FV SEAFARER*, 153 F.R.D. 491, 498-99 (D.R.I. 1994) (pretrial discovery of defendants' financial information required in relation to claim for punitive damages); *Norcon, Inc. v. Kotowski*, 971 P.2d 158, 173-177 (Alaska 1999) (setting out relevant considerations for punitive damages under Alaska law, including defendants' financial condition). It is also reasonably calculated to lead to the discovery of admissible evidence. *Id.*; *cf.* Fed.R.Civ.P. 26(b)(1).

Despite those points being brought to its attention, Nugget has totally refused to provide that information, or the requested documents which would disclose it. It has instead objected and continued to object, through its attorneys and Mr. Smithson, who signed Nugget's responses to those written discovery requests and testified as Nugget's designee at the Rule 30(b)(6) deposition. *See* Exh. 2 at pp. 6-15, 18-19; Exh. 4 at pp. 1-21, 29; & Exh. 5, attached hereto. In its objections to those discovery requests and deposition questioning, and in subsequent correspondence, Nugget has argued that AS 09.17.020(e) provides that unless the discovery of information or evidence of the defendant's financial condition is relevant to another issue in the case, it may not be conducted until after the fact finder has determined that the plaintiff is entitled to an

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award of punitive damages. *Id.*

However, that analysis fails.

First, the punitive damages claim and tortious causes of action which support it accrued during the spring and summer of 1997, well before the August 7, 1997 effective date of AS 09.17.020. North Star provided its services, and Nugget committed the torts against it, before then. That statute is therefore inapplicable according to the Alaska Legislature and the Alaska Supreme Court. *Norcon, Inc.*, 971 P.2d at 175-77 incl. n.21.

Nugget's counsel have contended there is a "plausible" argument otherwise, relying on this Court's order dated January 22, 2003. *See* Clerk's Docket No. 356 & attached Exhibit 5 at p. 3. In that Order this Court held that the Miller Act causes of action in this case did not accrue until after August 7, 1997, given the 90-day "waiting period" in the Miller Act as to claims arising under that Act. Clerk's Docket No. 356 at pp. 10-12.

However, Nugget's argument fails to distinguish between Miller Act claims and supplemental state law claims brought in the same action pursuant to this Court's supplemental jurisdiction, 28 USC §1367. In its aforementioned Order, this Court expressly stated it was dealing there only with a Miller Act cause of action. Clerk's Docket No. 356 at p. 12 nn.27&28. As the Ninth Circuit Court of Appeals has previously made clear, federal law applies to Miller Act claims. *See, e.g., K-W Industries v. National Surety Corp.*, 855 F.2d 640, 642-44 (9th Cir. 1988). On the other hand, state law, such as that stated in *Kotowski*, applies to state law claims filed in federal district

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court supplemental to a Miller Act claim. *Id. Accord, Alvarez v. Insurance Co. of North America*, 667 F.Supp. 689 (N. D. Cal. 1987). Even Nugget seems to recognize that, by citing an Alaska statute on the subject of punitive damages in an effort to thwart discovery in this case.

North Star's Amended Complaint separately sets forth its federal claims coming under the Miller Act (*see* Amended Complaint at pp. 8-13) and its claims based on state law coming within this Court's supplemental jurisdiction (*Id.* at ¶6 p. 4 & pp. 13-24). North Star's punitive damages claim is stated among those state law claims. *Id.* at p. 24 ¶39. Therefore, state law determines the accrual date for that claim, as it does for the tort claims based on state law also stated in that Amended Complaint. There is no 90-day "waiting period" as to those claims. The accrual date, as to North Star's state law claims, is before August 7, 1997, which is before the effective date of AS 09.17.020. Clerk's Docket No. 356 at p. 11 incl. n.25. Therefore, according to the *Norcon* decision, AS 09.17.020 is inapplicable to those claims.

Second, even were that statute applicable, it would not preclude present discovery of the information sought. AS 09.17.020 provides that, unless relevant to some other issue in the case, evidence of a defendant's financial condition and other factors relevant to the determination of the amount of punitive damages shall be introduced only after the fact finder has made a determination at trial of the defendant's outrageous conduct warranting an award of punitive damages. However, that statute does not provide that *discovery* of the defendant's financial condition and other information factoring into the

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award of punitive damages can only be had after the fact finder finds as fact the conduct warranting such an award.

Nugget's interpretation, that the discovery must wait until after determination of the outrageous behavior at trial, would lead to absurd results and be in violation of this Court's pretrial order. Should the jury in this case, having made the determination of outrageous behavior, then have to wait weeks and perhaps months while Nugget then allows discovery of its financial condition and that is then evaluated? Should that jury then have to be reconvened to determine the amount of punitive damages based on that and other related evidence, only after its memory of Nugget's outrageous behavior has perhaps faded? Discovery is simply discovery. It is not the presentation of evidence at trial. That is a wholly different matter. According to the pretrial order in this case discovery is supposed to close March 31, 2006, well before the trial in this case.

Nugget's argument also fails to recognize that *discovery* is a procedural matter governed in the federal courts by the Federal Rules of Civil Procedure. *Germann*, 153 F.R.D. at 497-98. Thus, state discovery practices are usually irrelevant. *Id.* As the court in *Germann* stated:

Under Fed.R.Civ.P. 26(b)(1), a party is entitled to discovery of any non-privileged matter which is relevant to the subject matter involved in the pending action. Information concerning the defendants' finances is relevant in this case because it can be considered in determining punitive damages.

* * *

To require a *prima facie* showing of entitlement to punitive damages before the completion of discovery would be to ignore one purpose of discovery – to locate evidence to support a claim before trial.

* * *

BURR, PEASE
& KURTZ
PROFESSIONAL CORPORATION
810 N STREET
ANCHORAGE, AK 99501
(907) 276-6100

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Furthermore, to deny discovery of net worth until plaintiffs can make a showing of a *prima facie* case at trial would only lead to delay and confusion while plaintiffs digest the information.

Id., 153 F.R.D. at 498-99 (citations omitted).

In addition, as counsel for Shoreside and Metco has previously pointed out, the financial information sought by plaintiffs' discovery requests is also pertinent to concerns about the financial viability of Nugget to satisfy a judgment in this case, including a possible dissipation of assets, and whether it might instead enter into bankruptcy, which is also relevant to settlement issues. *See* Exh. 4 at pp. 27-28 & Exh. 5 at pp. 1-2. At the recent Rule 30(b)(6) deposition of Nugget, its designee, Mr. Smithson, testified that he knows nothing about Nugget's financial condition. He also testified that any financial information would have to be obtained from Nugget's 100% owner, John Terwilliger, who is unwell according to Nugget and "available on a very limited basis", but Mr. Smithson testified Mr. Terwilliger is well enough to come into the office. *See* Exh. 4 at pp. 8-9a, 14-15, 21. *See also* Exh. 2 at pp. 15-16 (Nugget's answer to Interrogatory No. 4).

As a practical matter, the collectability of a judgment is a highly relevant matter, as is a realistic appraisal of the case's settlement value. As the court in *Germann* noted:

Additionally, knowledge of defendants' net worth may be of value to both sides in making a realistic appraisal of the case, and may lead to settlement and avoid protracted litigation.

153 F.R.D. at 499. *See also* *Holliman v. Redman Dev. Corp.*, 61 F.R.D. 488, 490-91 (D.S.C. 1973). The protracted history of this case and resulting expense is itself some

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basis for the aforementioned concerns and heightened relevancy of that information in this case.

IV. THE REQUESTED INFORMATION ABOUT NUGGET'S INSURANCE IS DISCOVERABLE.

Federal Civil Rule 26(a)(1)(D) expressly requires that a defendant produce, for inspection and copying as part of its initial disclosures required by that Rule, and without awaiting a discovery request: “*any* insurance agreement under which any person carrying on an insurance business *may* be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimbursed for payments made to satisfy the judgment.” *See* Fed. R.Civ.P. 26(a)(1)(D) (Emphasis added). The Advisory Committee Notes to that Rule provide:

Subparagraph (D) replaces subdivision (b)(2) of Rule 26, and provides that liability insurance policies be made available for inspection and copying. The last two sentences of that subdivision have been omitted as unnecessary, not to signify any change of law.

Under that rule, as with the prior rule, whether the insurer or the defendant believes there is coverage under the policies does not affect discoverability. *See* 8 Wright, Miller & Marcus, Federal Practice and Procedure, §2010 at p. 186 (1994 ed.) As is also stated in the Advisory Committee Notes to former Rule 26(b)(2):

Disclosure is required when the insurer “may be liable” on part or all of the judgment. *Thus, an insurance company must disclose even when it contests liability under the policy*, and such disclosure does not constitute a waiver of its claim.

Id. at n.22 (emphasis added). As earlier noted, promulgation of Rule 26(a)(1)(D) in 1993 represented “no change in the law” in that respect; it simply transformed the discovery of

those policies, including reinsurance agreements, into a mandatory initial disclosure requirement. *Id.* at p. 187; *Potomac Electric Power v. California Union Insurance*, 136 F.R.D. 1, 2 (D.C.D.C. 1990).

In its initial Disclosures provided pursuant to Rule 26(a)(1) and this Court's October 12, 2005 pretrial Order (Clerk's Docket Nos. 415 & 414), Nugget simply stated the position that any insurance agreements it has are "Not applicable as to Plaintiffs' Miller Act or state law claims" and produced none. *See* Exh. 1 at p. 3. In answer to North Star's Interrogatory No. 5 and Request for Production No. 8, which requested those policies and identification of the "person or persons" most knowledgeable regarding them, Nugget again took the position that there are no "applicable" insurance agreements, and stated further that "if any insurance agreement were applicable to this lawsuit, then John Terwilliger would be the person with the most knowledge on such insurance agreement." *See* Exh. 2 at pp. 16-17. At Nugget's Rule 30(b)(6) deposition in which that information was again requested, Mr. Smithson, appearing instead of Mr. Terwilliger, testified that Nugget had insurance policies, but he had been told the policies are inapplicable. *See* Exh. 3 at p. 3 ¶¶3-4; Exh. 4 at pp. 21-25. At that deposition and subsequently he and Nugget's legal counsel identified the insurance agent for Nugget as the source for that information. *See* Exh. 4 at pp. 23-25; Exh. 5 at p. 1.

As previously pointed out, a party must allow discovery of its insurance agreements, including but not limited to comprehensive general liability policies, regardless of whether it or its insurance agent or insurer believes coverage exists as to

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particular claims. As counsel for Shoreside and Metco has pointed out in previous correspondence to Nugget's attorneys, the rule "does not allow one party unilaterally to make a decision regarding coverage" and whether it is "applicable". See Exh. 5 at p. 2. As Mr. Shamburek has noted: "Nugget may not recognize coverage, although the claimants and the court would." *Id.* As this Court well knows, disagreements and disputes over whether insurance policy coverage exists are a common subject in virtually every court, including the opinions of the Alaska Supreme Court and no doubt every federal circuit court. Undersigned counsel and other attorneys in this law firm and the courts have previously found coverage in policies where an insurer or other party did not. That is not an uncommon phenomenon. The rule provides that all insurance policies which *may* provide coverage be provided, not just those agreements a party or its insurance agent unilaterally determines are "applicable".

Accordingly, all of the requested insurance agreements, for the entire applicable period 1996 to present, should be produced, as should any information and documents regarding Nugget claims against insurance, which were also requested (Exh. 3 at p. 2), as those would be evidence of "applicability". Further, Nugget's "insurance agent" on which it has relied should be identified and made to testify at recommencement of the Rule 30(b)(6) deposition of Nugget if requested, as one of those persons now being identified as "most knowledgeable" regarding those policies. So too should John Terwilliger, because identified by Nugget and Mr. Smithson as "most knowledgeable" both on the subject of insurance and on the subject of Nugget's financial condition,

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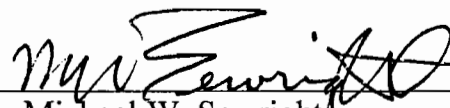
including its indemnity agreement with USF&G, its surety. *See* Exh. 2 at pp. 15-17, Exh. 4 at pp. 21-22.

V. CONCLUSION

Accordingly, the requested discovery should be ordered. A proposed Order providing the requested relief accompanies this Motion.

Dated at Anchorage, Alaska, this 14th day of December 2005.

BURR, PEASE & KURTZ
Attorneys for the North Star

By 
Michael W. Sewright
Alaska Bar No. 7510090

CERTIFICATE OF SERVICE

I certify that on the 15 day of December, 2005, a copy of the above and foregoing **MOTION TO COMPEL DISCOVERY** was served by Hand

Delivery on:

Traeger Machetanz, Esq.

Gloria Y. Ho, Esq.

OLES MORRISON & RINKER

745 West Fourth Avenue, Suite 502

Anchorage, AK 99501

Herbert A. Viergutz

Barokas Martin & Tomlinson

1029 W. 3rd Ave., Suite 280

Anchorage, AK 99501

And by mail on:

Steven J. Shamburek, Esq.

425 G Street, Suite 630

Anchorage, AK 99501-5872

C. Patrick Stoll, Esq.

HERRIG VOGT & STOLL LLP

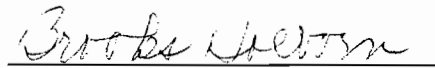
4210 Douglas Blvd., Ste. 100

Granite Bay, CA 95746-5902

Paul D. Stockler, Esq.

1309 W. 16th Ave

Anchorage, AK 99501



Brooks Holborn

MOTION TO COMPEL DISCOVERY

North Star v. Nugget, et al.; Case No. A98-009 CIV (HRH)

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Traeger Machetanz, Esq.
 OLES MORRISON RINKER & BAKER, LLP
 745 Fourth Avenue, Suite 502
 Anchorage, AK 99501-2136
 Telephone: (907) 258-0106
 Telecopier: (907) 258-5519

Attorneys for Nugget Construction Co.,
 Inc., and USF&G, Defendants

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA AT ANCHORAGE

UNITED STATES OF AMERICA for the
 use of NORTH STAR TERMINAL &
 STEVEDORE COMPANY, d/b/a NORTHERN
 STEVEDORING & HANDLING, and NORTH
 STAR TERMINAL & STEVEDORE COMPANY,
 d/b/a Northern Stevedoring &
 Handling, on its own behalf,

No. A98-009 CIV (HRH)

Plaintiffs,

and

UNITED STATES OF AMERICA for the
 use of SHORESIDE PETROLEUM, INC.,
 d/b/a Marathon Fuel Service, and
 SHORESIDE PETROLEUM, INC., d/b/a
 Marathon Fuel Service, on its own
 behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
 ROCK PRODUCTS, INC.; UNITED
 STATES FIDELITY AND GUARANTY
 COMPANY; and ROBERT A. LAPORE,

Defendants.

RULE 26(a)(1) SECOND
SUPPLEMENTAL DISCLOSURES
BY DEFENDANTS NUGGET
CONSTRUCTION, INC., AND
UNITED STATES FIDELITY
AND GUARANTY COMPANY

OLE'S MORRISON RINKER & BAKER LLP
 745 West Fourth Avenue, Suite 502
 Anchorage, Alaska 99501-2136
 Tel: (907) 258-0106 Fax: (907) 258-5519

Defendants Nugget Construction, Inc., ("Nugget") and the United States Fidelity and Guaranty Company ("USF&G") by and through their attorneys, Oles Morrison Rinker & Baker LLP, pursuant to Rules 26(a)(1) and 26(e) of the Federal Rules of Civil Procedure, hereby provide their second supplemental disclosures, which supplement their initial disclosures dated July 8, 1998, and their first supplemental disclosures dated October 18, 2005:

(A) Identity of each individual likely to have discoverable information in support of claims or defenses.

Nugget's and USF&G's Initial Disclosures dated July 8, 1998, are supplemented herein:

1. **B.(1)(a)**: Mr. John Terwilliger is recovering from adverse health problems, and will be available on a very limited basis to provide information on the transactions between (a) Nugget Construction Inc., Spencer Rock Products and Robert LaPore on the Homer Spit Repair and Extension Project; (b) Nugget Construction Inc., U.S. Army Corps of Engineers and USF&G on the Homer Spit Repair and Extension Project; and (c) Nugget

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Nugget Construction, Inc. and United States Fidelity and
Guaranty Company -- Page 2 of 11

DESCRIPTION	LABEL (Process of Bates numbering)
Manila Folder	711 - NCI VS SRP FILE #8
Manila Folder	711 - SPENCER vs NCI FILE #9
Manila Folder	711 - NCI vs. SRP FILE #10
Manila Folder	711 - NCI vs. SRP FILE #11
Manila Folder	711 - NCI vs. SRP FILE #12
Manila Folder	711 - NCI vs. SRP FILE #13
Manila Folder	611 - HOMER SPIT REPAIR CORR. WITH COUNCIL FILE #6

(C) Computation of damages.

Nugget's and USF&G's damages in this litigation consist of attorneys fees and costs in their defense against Plaintiffs' s claims under the Federal Miller Act, and Alaska state law. At present, the extent of damages is unknown. Nugget and USF&G reserve the right to supplement the computation of damages, and to disclose non-privileged evidentiary material on which such computation is based prior to trial, or as and when appropriate.

(D) Insurance agreement(s) which may be liable to satisfy part or all of a judgment.

Not applicable as to Plaintiffs' Miller Act or state law claims.

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Rule 26(a) Second Supplemental Disclosures By Defendants
Nugget Construction, Inc. and United States Fidelity and
Guaranty Company -- Page 10 of 11

1 Dated: October 26, 2005

2 OLES MORRISON RINKER & BAKER LLP
3 Attorneys for Nugget Construction,
4 Inc., and United States Fidelity
5 and Guaranty Co.

6 By: 

Traeger Machetanz
Alaska Bar No. 8411127

8 P-GYH 085 DISC 2nd Supp 102505

9 CERTIFICATE OF SERVICE

10 I hereby certify that on this 26th
11 day of October, 2005, a true and correct
12 copy of the foregoing was mailed to:

12 Michael W. Sewright, Esq.
13 Burr, Pease & Kurtz
14 810 N Street
15 Anchorage, AK 99501

15 Steven J. Shamburek, Esq.
16 Law Office of Steven J. Shamburek
17 425 G Street, Suite 630
18 Anchorage, AK 99501-5872

17 Paul Stockler, Esq.
18 1309 West 16th Avenue
19 Anchorage, AK 99501

19 C. Patrick Stoll, Esq.
20 Herrig Vogt & Stoll LLP
21 4210 Douglas Bay Blvd., Suite 100
22 Granite Bay, CA 95746-5902

22 OLES MORRISON RINKER & BAKER LLP

23 By: 

Karin Gustafson

24
25 U.S. ex rel. North Star, et al. v. Nugget Construction, et al.
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Rule 26(a) Second Supplemental Disclosures By Defendants
Nugget Construction, Inc. and United States Fidelity and
Guaranty Company -- Page 11 of 11

OLES MORRISON RINKER & BAKER LLP
745 West Fourth Avenue, Suite 502
Anchorage, Alaska 99501-2136
Tel: (907) 258-0106 Fax: (907) 258-5519

Exhibit 1
4 of 4

1 Traeger Machetanz, Esq.
 2 OLES MORRISON RINKER & BAKER, LLP
 3 745 Fourth Avenue, Suite 502
 4 Anchorage, AK 99501-2136
 5 Telephone: (907) 258-0106
 6 Telecopier: (907) 258-5519

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NOV 10 2005

BUBE, PEASE & KURTZ

7 Attorneys for Nugget Construction Co.,
 8 Inc., and USF&G, Defendants

9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

11 UNITED STATES OF AMERICA for the)
 12 use of NORTH STAR TERMINAL &)
 13 STEVEDORE COMPANY, d/b/a NORTHERN)
 14 STEVEDORING & HANDLING, and NORTH)
 15 STAR TERMINAL & STEVEDORE COMPANY,)
 16 d/b/a Northern Stevedoring &)
 17 Handling, on its own behalf,)

No. A98-009 CIV (HRH)

18 Plaintiffs,

19 and

20 UNITED STATES OF AMERICA for the)
 21 use of SHORESIDE PETROLEUM, INC.,)
 22 d/b/a Marathon Fuel Service, and)
 23 SHORESIDE PETROLEUM, INC., d/b/a)
 24 Marathon Fuel Service, on its own)
 25 behalf,)

NUGGET'S RESPONSES TO
NORTH STAR'S FIRST
SET OF DISCOVERY
REQUESTS

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

22 NUGGET CONSTRUCTION, INC.; SPENCER)
 23 ROCK PRODUCTS, INC.; UNITED)
 24 STATES FIDELITY AND GUARANTY)
 25 COMPANY; and ROBERT A. LAPORE,)

Defendants.

1 COMES NOW Defendant Nugget Construction, Inc.,
2 ("Nugget") and makes the following responses to North Star's
3 First Set of Discovery Requests to Defendant Nugget
4 Construction, Inc.

5
6 GENERAL OBJECTIONS

7
8 1. Nugget objects to all instructions and
9 definitions in North Star's First Set of Discovery Requests to
10 the extent that they enlarge upon, supersede, or in any way
11 modify the rules of discovery as set forth in Fed. R. Civ.
12 P. 26, 33, and 34.

13
14 2. Nugget objects to all instructions and
15 definitions in North Star's First Set of Discovery Requests to
16 the extent they are intended, or can be construed, to expand or
17 modify Nugget's obligations, responsibilities, or duties beyond
18 the scope of the Federal Rules of Civil Procedure.

19
20 3. Nugget objects to North Star's interrogatories
21 and requests for production of documents to the extent that they
22 seek information or documentation that is (a) not relevant to
23 the subject matter of this lawsuit; (b) not reasonably
24 calculated to lead to the discovery of admissible evidence; (c)

25 *U.S. ex rel. North Star, et al. v. Nugget Construction, et al.*

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Nugget's Responses to North Star's First
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1 unreasonably cumulative or duplicative, or is obtainable from
2 another source that is more convenient, less burdensome, or less
3 expensive; (d) overbroad or unduly burdensome; or (e) vague or
4 ambiguous.

5
6 4. Nugget objects to North Star's interrogatories
7 and requests for production of documents to the extent that they
8 seek information or documentation that is protected by the
9 attorney-client privilege, the attorney work-product doctrine,
10 or otherwise immune from discovery under any other recognized
11 legal privilege. Nugget expressly reserves all attorney-client,
12 work-product and other legally recognized privileges under the
13 Federal Rules of Civil Procedure and the Federal Rules of
14 Evidence.
15

16
17 5. Nugget objects to North Star's interrogatories
18 and requests for production of documents insofar as they are
19 directed to the knowledge of persons or entities not subject to
20 Nugget's control at the time when these responses were prepared.
21

22 6. Nugget objects to North Star's interrogatories
23 and requests for production of documents to the extent that they
24 seek information or documentation previously disclosed or
25

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1 produced to North Star or to its counsel by the other named
2 parties in this lawsuit, whether produced in response to
3 discovery requests or otherwise.
4

5 7. Nugget objects to North Star's requests for
6 production of documents insofar as they impose an undue burden
7 on Nugget to produce documents (a) at other than a reasonable
8 time and place; (b) that are not in existence; (c) that require
9 Nugget to assemble documents in a manner different from which
10 they are kept in the ordinary course of business; or (d) that is
11 not presently in the possession, custody, or control of Nugget.
12

13 8. Nugget objects to North Star's interrogatories
14 insofar as the response can be derived or ascertained by North
15 Star as easily as it can by Nugget from Nugget's document
16 production, consistent with the provisions of Fed. R. Civ.
17 P. 33(d).
18

19 9. Nugget objects to North Star's requests for
20 production of documents to the extent that they (a) do not set
21 forth, either by individual item or by category, the items to be
22 inspected and described with reasonable particularity or (b)
23 request Nugget to select or categorize documents in a manner
24

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1 that would require Nugget to disclose opinions, conclusions,
2 thought processes, or mental impressions of its attorneys and
3 thus violating the work-product doctrine. See Fed. R. Civ. P.
4 26(b)(3) and 34(b); *Hickman v. Taylor*, 329 U.S. 495 (1947).
5

6 10. Nugget objects to North Star's First Set of
7 Discovery Requests to the extent it is intended, or can be
8 construed, to call upon Nugget to relinquish custody and control
9 of its documents or to reproduce documents at its own expense.
10

11 11. Nugget specifically reserves the right to object,
12 as appropriate, to any of the documents produced in response to
13 North Star's First Set of Discovery Requests, as evidence at any
14 trial in this matter or for any other purpose.
15

16 12. Subject to the foregoing general objections,
17 which are incorporated by reference into each individually
18 numbered interrogatory and request for production propounded by
19 North Star in its First Set of Discovery Requests, Nugget
20 provides the following responses:
21

22 INTERROGATORY NO. 1: State the present or, if the
23 present is not known to you, the last known address and
24 telephone numbers for each of the anticipated witnesses named on
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1 INTERROGATORY NO. 2: Identify, by category and dollar
2 value, any and all of your assets, including but not limited to
3 property and account receivables, for any and all parts of the
4 period January 1, 1996 through present, and by supplementation,
5 up to the date of trial herein.
6

7 ANSWER: Nugget specifically objects to this
8 interrogatory as it seeks information that is (a) overly broad
9 and unduly burdensome; (b) not a contested issue in the lawsuit;
10 (c) wholly irrelevant to the subject matter of this lawsuit; and
11 (d) not reasonably calculated to lead to the discovery of
12 admissible evidence. Nugget further objects to this
13 interrogatory to the extent it seeks privileged, confidential or
14 proprietary information.
15

16
17 Moreover, Nugget objects on the basis that this
18 interrogatory is premature at this time with respect to North
19 Star's punitive damages claim. A.S. 09.17.020(e) specifically
20 provides that unless the evidence is relevant to another issue
21 in the case, the discovery of evidence that is relevant to the
22 amount of punitive damages to determine (a) the amount of
23 financial gain the defendant gained or expected to gain as a
24 result of the defendant's conduct, or (b) the defendant's
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1 financial condition may not be conducted until after the fact
2 finder has determined that an award of punitive damages is
3 allowed under the clear and convincing standard. A.S.
4 09.17.020(e) further provides that the court may issue orders
5 directing the parties to have the information relevant to the
6 amount of punitive damages to determine the defendant's
7 financial or expected gain as a result of defendant's conduct,
8 or the defendant's financial condition available for production
9 at the close of the initial trial.
10

11
12 REQUEST FOR PRODUCTION NO. 3: Produce any and all
13 documents supporting your representation of assets which you
14 were requested to identify by Interrogatory No. 2.

15
16 ANSWER: Nugget specifically objects to this request as
17 it seeks documentation that is (a) overly broad and unduly
18 burdensome; (b) not a contested issue in the lawsuit; (c) wholly
19 irrelevant to the subject matter of this lawsuit; and (d) not
20 reasonably calculated to lead to the discovery of admissible
21 evidence. Nugget further objects to this request to the extent
22 it seeks privileged, confidential, or proprietary information.
23
24

25
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1 Moreover, Nugget objects on the basis that this
2 interrogatory is premature at this time with respect to North
3 Star's punitive damages claim. A.S. 09.17.020(e) specifically
4 provides that unless the evidence is relevant to another issue
5 in the case, the discovery of evidence that is relevant to the
6 amount of punitive damages to determine (a) the amount of
7 financial gain the defendant gained or expected to gain as a
8 result of the defendant's conduct or (b) the defendant's
9 financial condition may not be conducted until after the fact
10 finder has determined that an award of punitive damages is
11 allowed under the clear and convincing standard. A.S.
12 09.17.020(e) further provides that the court may issue orders
13 directing the parties to have the information relevant to the
14 amount of punitive damages to determine the defendant's
15 financial or expected gain as a result of defendant's conduct,
16 or the defendant's financial condition available for production
17 at the close of the initial trial.

20 REQUEST FOR PRODUCTION NO. 4: Produce your complete
21 federal income tax returns, including all schedules, attachments
22 and amendments, for the tax years 1996 through present and, by
23 supplementation, up to the date of trial herein.

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1 ANSWER: Nugget specifically objects to this request
2 as it seeks documentation that is (a) overly broad and unduly
3 burdensome; (b) not a contested issue in the lawsuit; (c) wholly
4 irrelevant to the subject matter of this lawsuit; and (d) not
5 reasonably calculated to lead to the discovery of admissible
6 evidence. Nugget further objects to this request to the extent
7 it seeks privileged, confidential or proprietary information.
8

9 Moreover, Nugget objects on the basis that this
10 interrogatory is premature at this time with respect to North
11 Star's punitive damages claim. A.S. 09.17.020(e) specifically
12 provides that unless the evidence is relevant to another issue
13 in the case, the discovery of evidence that is relevant to the
14 amount of punitive damages to determine (a) the amount of
15 financial gain the defendant gained or expected to gain as a
16 result of the defendant's conduct or (b) the defendant's
17 financial condition may not be conducted until after the fact
18 finder has determined that an award of punitive damages is
19 allowed under the clear and convincing standard. A.S.
20 09.17.020(e) further provides that the court may issue orders
21 directing the parties to have the information relevant to the
22 amount of punitive damages to determine the defendant's
23
24
25

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1 financial or expected gain as a result of defendant's conduct or
2 the defendant's financial condition available for production at
3 the close of the initial trial.

4
5 REQUEST FOR PRODUCTION NO. 5: Produce all of your
6 financial statements and related records in any way evidencing
7 your financial condition for the periods January 1, 1996,
8 through present and, by supplementation, up to the date of trial
9 herein.

10
11 ANSWER: Nugget specifically objects to this request as
12 it seeks documentation that is (a) overly broad and unduly
13 burdensome; (b) not a contested issue in the lawsuit; (c) wholly
14 irrelevant to the subject matter of this lawsuit; and (d) not
15 reasonably calculated to lead to the discovery of admissible
16 evidence. Nugget further objects to this request to the extent
17 it seeks privileged, confidential or proprietary information.

18
19 Moreover, Nugget objects on the basis that this
20 interrogatory is premature at this time with respect to North
21 Star's punitive damages claim. A.S. 09.17.020(e) specifically
22 provides that unless the evidence is relevant to another issue
23 in the case, the discovery of evidence that is relevant to the
24

25
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1 amount of punitive damages to determine (a) the amount of
 2 financial gain the defendant gained or expected to gain as a
 3 result of the defendant's conduct or (b) the defendant's
 4 financial condition may not be conducted until after the fact
 5 finder has determined that an award of punitive damages is
 6 allowed under the clear and convincing standard. A.S.
 7
 8 09.17.020(e) further provides that the court may issue orders
 9 directing the parties to have the information relevant to the
 10 amount of punitive damages to determine the defendant's
 11 financial or expected gain as a result of defendant's conduct,
 12 or the defendant's financial condition available for production
 13 at the close of the initial trial.
 14

15 REQUEST FOR PRODUCTION NO. 6: Produce documents
 16 accurately stating the total gross net income, from all sources,
 17 received by you in the years 1996 through present and, by
 18 supplementation, up to the date of trial herein.
 19

20 ANSWER: Nugget specifically objects to this request
 21 as it seeks documentation that is (a) overly broad and unduly
 22 burdensome; (b) not a contested issue in the lawsuit; (c) wholly
 23 irrelevant to the subject matter of this lawsuit; and (d) not
 24 reasonably calculated to lead to the discovery of admissible
 25

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1 evidence. Nugget further objects to this request to the extent
2 it seeks privileged, confidential or proprietary information.

3
4 Moreover, Nugget objects on the basis that this
5 interrogatory is premature at this time with respect to North
6 Star's punitive damages claim. A.S. 09.17.020(e) specifically
7 provides that unless the evidence is relevant to another issue
8 in the case, the discovery of evidence that is relevant to the
9 amount of punitive damages to determine (a) the amount of
10 financial gain the defendant gained or expected to gain as a
11 result of the defendant's conduct or (b) the defendant's
12 financial condition may not be conducted until after the fact
13 finder has determined that an award of punitive damages is
14 allowed under the clear and convincing standard. A.S.
15 09.17.020(e) further provides that the court may issue orders
16 directing the parties to have the information relevant to the
17 amount of punitive damages to determine the defendant's
18 financial or expected gain as a result of defendant's conduct,
19 or the defendant's financial condition available for production
20 at the close of the initial trial.
21
22

23 INTERROGATORY NO. 3: State your dollar amounts of
24 gross revenue, pre-tax net profit, and equity per year for the
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1 period 1996 through present and, by supplementation, up to the
2 date of trial herein.

3
4 ANSWER: Nugget specifically objects to this
5 interrogatory as it seeks information that is (a) overly broad
6 and unduly burdensome; (b) not a contested issue in the lawsuit;
7 (c) wholly irrelevant to the subject matter of this lawsuit; and
8 (d) not reasonably calculated to lead to the discovery of
9 admissible evidence. Nugget further objects to this
10 interrogatory to the extent it seeks privileged, confidential,
11 or proprietary information.
12

13 Moreover, Nugget objects on the basis that this
14 interrogatory is premature at this time with respect to North
15 Star's punitive damages claim. A.S. 09.17.020(e) specifically
16 provides that unless the evidence is relevant to another issue
17 in the case, the discovery of evidence that is relevant to the
18 amount of punitive damages to determine (a) the amount of
19 financial gain the defendant gained or expected to gain as a
20 result of the defendant's conduct or (b) the defendant's
21 financial condition may not be conducted until after the fact
22 finder has determined that an award of punitive damages is
23 allowed under the clear and convincing standard. A.S.
24

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1 09.17.020(e) further provides that the court may issue orders
2 directing the parties to have the information relevant to the
3 amount of punitive damages to determine the defendant's
4 financial or expected gain as a result of defendant's conduct,
5 or the defendant's financial condition available for production
6 at the close of the initial trial.
7

8 REQUEST FOR PRODUCTION NO. 7: Produce any and all
9 documents supporting your representations of gross revenue, pre-
10 tax net profit, and equity which you were requested to state by
11 Interrogatory No. 3.
12

13 ANSWER: Nugget specifically objects to this request as
14 it seeks documentation that is (a) overly broad and unduly
15 burdensome; (b) not a contested issue in the lawsuit; (c) wholly
16 irrelevant to the subject matter of this lawsuit; and (d) not
17 reasonably calculated to lead to the discovery of admissible
18 evidence. Nugget further objects to this request to the extent
19 it seeks privileged, confidential or proprietary information.
20

21
22 Moreover, Nugget objects on the basis that this
23 interrogatory is premature at this time with respect to North
24 Star's punitive damages claim. A.S. 09.17.020(e) specifically
25

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1 provides that unless the evidence is relevant to another issue
2 in the case, the discovery of evidence that is relevant to the
3 amount of punitive damages to determine (a) the amount of
4 financial gain the defendant gained or expected to gain as a
5 result of the defendant's conduct or (b) the defendant's
6 financial condition may not be conducted until after the fact
7 finder has determined that an award of punitive damages is
8 allowed under the clear and convincing standard. A.S.
9
10 09.17.020(e) further provides that the court may issue orders
11 directing the parties to have the information relevant to the
12 amount of punitive damages to determine the defendant's
13 financial or expected gain as a result of defendant's conduct,
14 or the defendant's financial condition available for production
15 at the close of the initial trial.
16

17 INTERROGATORY NO. 4: Identify the person or persons
18 most knowledgeable regarding the subject matter of Interrogatory
19 numbers 2 and 3 and Request for Production Nos. 3-7 herein,
20 including your tax returns and financial statements, records and
21 status (including net worth and operating capital) during all
22 parts of the period from January 1, 1996, through present and,
23 by supplementation, up to the date of trial in this matter.
24

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